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Robert E. Krebs
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P. O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

VAN DOREN, BETH

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,515

Applicant(s)

KROTKI, KAROL P.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The following is a final office action in response to communications received 04/28/2006. Claims 1-2, 4, and 7-10 have been amended. Claims 1-4 and 7-10 are pending in this application.

Response to Amendment

2. Applicant's amendments to claims 4 and 10 are sufficient to overcome the claim objections and the 35 USC § 112, second paragraph, rejections set forth in the previous office action.

Response to Arguments

3. Applicant's arguments with regards to Decision Analyst, Inc. (www.decisionanalyst.com) and Probability Definitions (stat.wvu.edu/SRS/modules/ProbDef/urn.html) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that the prior art does not teach or suggest (1) how to compensate the removal of panel members so that the remaining members are non-skewed for the subsequent survey and thus the remaining members match the demographics of the general public, (2) a weight factor proportionate to the number of original members in the group over the number of remaining members in the group in the available panel (claim 3), (3) one or more weighting factors are multiplied to the weights of the remaining members of the available survey panel to compensate for the removal of people who have been previously given a survey within a certain time period, (4) a removal weighting factor, a selection weighting factor, and an original weighting factor.

In response to argument (1), Examiner respectfully disagrees. On page 3, Decision Analyst, Inc. specifically discusses building balanced, representative panels that match the

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demographic profile of the US or the relevant target market. This sampling is done across multiple variables using a sampling system. Page 4 discloses that the composition of the sample chosen is checked against target demographics to see if weighting needs to occur. See page 9, section 1, and page 14, section 1, which further discuss balanced, representative panels.

Furthermore, Decision Analyst, Inc. discusses that when a first group of members is selected, these members are removed from eligibility. Thus, the number of potential members for future panels reduces with time, thus the numbers must be adjusted. Probability Definitions was relied upon to teach a mathematical means to perform the removal of Decision Analyst, Inc. Therefore, Examiner believes that the combination of Decision Analyst, Inc. and Probability Definitions meets the claim limitations.

In response to argument (2), Examiner respectfully disagrees. Decision Analyst, Inc. teaches that weights of the additional members are modified to compensate for the group members removed from the panel. Thus, when the first group selected is removed from eligibility, the remaining members have a higher chance (weighting factor) of being selected since the number in the pool is decreased. See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1. Examiner relied on Probability Definitions to disclose sampling without replacement and changing selection probabilities to compensate for removal of a member of a population. See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal. Probability Definitions shows using fractional proportions to show the weight of each member being selected. Therefore, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to

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use a weight factor that reflects the sampling without replacement in order to increase the motivation of the panel members by not overusing said members. See at least page 7.

In response to argument (3), Examiner respectfully disagrees. When a first group of members is selected, these members are removed from eligibility. Thus, the remaining members have a higher chance of being selected since the number in the pool is decreased. Thus the removal of members influences the probabilities of selection for the other members. See pages 3 and 4. See also page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1.

In response to argument (4), Examiner respectfully disagrees. Decision Analyst, Inc. teaches weighting factors that influence selection. An original weighting factor is used to match the members of the available survey panel to the demographics of the general population and a removal weighting factor to compensate for all of the members of the panel removed from the panel. See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the groups are originally chosen based on a factor, and then when the first group selected, this group is removed from eligibility, thus giving the remaining members a higher weight of being selected since the number in the pool is decreased. Examiner set forth that Decision Analyst, Inc. did not expressly disclose a selection weighting factor to deal with a non-proportionate selection, but relied on Probability Definitions to teach this element. Therefore, Examiner has established a prima facie case of obviousness.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 7 recites "equal to the weights over the members of the available survey panel". It is unclear as to what this language specifically means. Examiner construes this limitation to be --equal to the weights of the members of the available survey panel--. Next, claim 7 recites "determining a cumulative weight for each of the members of the available survey panel". It is unclear as to what this "cumulative weight" specifically represents (i.e. how it is calculated, what is included in it, etc.). The last limitation of claim 7 contains an "if" statement. First, it is unclear what is occurring in this if statement. Is one member of the available panel checked or is the process iterative, checking each possible member. Further, the claim has no recitation claiming what would occur if this if statement is not met. For example, in the case where the cumulative weight of a member does not match the sum of the random number and an integer multiple, it is unclear as to what outcome would specifically occur (i.e. is the method iterative and then it moves to the next member, does it stop with one member, what if no members match this check, etc).

Therefore, based on the issues above, it is unclear as to what specifically is occurring in claim 7. Clarification is required.

Claim 8 contains similar limitations to claim 7 and thus contains the same deficiencies.

Clarification is required.

SMD The allowability of claims 7 and 8 will be reevaluated once the § 112, 2nd issues are addressed.
Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decision Analyst, Inc. (www.decisionanalyst.com) in view of Probability Definitions (stat.wvu.edu/SRS/modules/ProbDef/urn.html).

As per claim 1, Decision Analyst, Inc. teaches a computer-implemented method comprising:

identifying a group within an available survey panel including a plurality of members, the group having predetermined characteristics (See page 3, section 1, page 5, section 1, page 8, section 1, and page 14, section 1, wherein a group having predetermined characteristics are identified);

determining a weight for each of the members, said weight being derived to match the members to demographics of the general public (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the groups are originally chosen based on a factor related to demographics);

selecting a first set of members from the group for a first survey (See page 3, section 1, page 7, section 1, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the members are selected);

temporarily removing the selected first set of members from the available survey panel (See at least page 7, sections 1-2, wherein the first members are removed and blocked from similar surveys for a minimum of six months);

adjusting weights of the remaining members of the available survey panel to compensate for the removal of the first set of members from the available survey panel and thereby to make

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the remaining members of the available survey panel match the demographics (See page 3, section 1, and page 4 (“data weighting”). See also page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the groups are originally chosen based on a factor related to demographics, and then when the first group selected, this group is removed from eligibility, thus giving the remaining members a higher weight of being selected since the number in the pool is decreased); and

selecting, with processor, additional members from the available survey panel for a second survey while compensating for the removal of the first set of members from the available survey panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein additional members are drawn to complete surveys in the same product category, this drawing occurring with the first group removed from eligibility, thus making the chance of selection is higher for the available members).

However, while Decision Analyst, Inc. discloses choosing survey panel members by product without replacing the members to the pool (i.e. sampling without replacement), Decision Analyst, Inc. does not expressly disclose selection probabilities that compensate for the removal of these members, where selection probabilities of the additional members being respectively proportional to the adjusted weights to compensate for the removal of the first set of members from the available survey panel.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

As per claim 2, Decision Analyst, Inc. teaches choosing survey panel members by product without replacing the members to the pool (i.e. sampling without replacement) and then, after removal, selecting additional members (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein additional members are drawn to complete surveys in the same product category, this drawing occurring with the first group removed from eligibility, thus making the chance of selection is higher for the available members). However, Decision Analyst, Inc. does not expressly disclose and Probability Definitions discloses adjusting weight to increase the selection probabilities of remaining members in the group (See page 1, section 1-2, wherein in sampling with Replacement the probabilities of the remaining members increase, such as the probability going from 6/10 to 5/9).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

As per claim 3, Decision Analyst, Inc. teaches wherein weights of the additional members are modified to compensate for the group members removed from the panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher weighting factor of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose using a weight factor proportionate to the number of original members in the group over the number of remaining members in the group in the available panel.

Probability Definitions teach sampling without replacement and changing selection probabilities to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probability of selection is adjusted to compensate for the removal of the members, as shown by Probability Definitions. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a weight factor that reflects the sampling without replacement in order to increase the motivation of the panel members by not overusing said members. See at least page 7.

As per claim 4, Decision Analyst, Inc. teaches wherein multiple groups are identified within the available survey panel, and members of these multiple groups are selected for the survey and removed from the available survey panel, and wherein the multiple groups are modified to compensate for the removal of the members of the group from the available survey panel (See page 3, section 1, page 5, page 7, section, page 8, section 1, and page 14, section 1, wherein multiple groups exist within the available panel and once a member takes a survey within a specific product category, the member is removed from the pool. The subsequent chance of the additional members of being selected is compensated and these members have a higher probability of selection).

However, Decision Analyst, Inc. does not expressly disclose modifying selection probabilities to compensate for the removal of members.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein in sampling with Replacement, selection probabilities incorporate removal).

Decision Analyst, Inc. discloses sampling to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probabilities of remaining members are updated for the removal of members. Probability Definitions discloses this sampling without replacements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to remove the survey panel members of Decision Analyst, Inc. by compensating selection probabilities for the removal of members of the population in order to increase the quality of the survey data by limiting the number of surveys given to member, thus keeping panel members “fresh” and “healthy” by not spamming the members with surveys. See page 7, sections 1-3, which discusses the rationale for removing respondents from a pool.

As per claim 9, Decision Analyst, Inc. teaches wherein one or more weighting factors are multiples to the weights of the remaining members of the available survey panel to compensate for the removal of people who have been previously given a survey within a certain time period (See pages 3 and 4. See also page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher chance or weighting factor of being selected since the number in the pool is decreased).

As per claim 10, Decision Analyst, Inc. teaches weighting factors used and including an original weighting factor to match the members of the available survey panel to the demographics of the general population and a removal weighting factor to compensate for all of the members of the panel removed from the panel (See page 7, sections 1-2, page 8, section 1,

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page 9, section 1, and page 14, section 1, wherein the groups are originally chosen based on a factor, and then when the first group selected, this group is removed from eligibility, thus giving the remaining members a higher weight of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose a selection weighting factor to deal with a non-proportionate selection.

Probability Definitions discloses that when sampling without replacement, selection probabilities change to compensate for removal of a member of a population (See page 1, section 1-2, wherein selection factors change to compensate for the group being non-proportional to the original group).

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the selection-weighting factors of the members remaining in the population are adjusted to increase the probability of selection, as disclosed by Decision Analyst, Inc. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include selection weighting factors in order to more properly manage the selection of appropriate panel members by ensuring only eligible members are chosen. See pages 7 and 14.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pinsley et al. (U.S. 6,070,145) discloses selecting survey respondents and selection probabilities of being selected.

Afeyan et al. (U.S. 2003/0088458) teaches segmenting the market using selection probabilities.

Heching et al. (U.S. 7,054,828) discloses sampling and sample data that reflects behaviors in the population of data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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bvd

July 3, 2006

Susanna Diaz

SUSANNA M. DIAZ
PRIMARY EXAMINER

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